



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

*ge*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,201	02/01/2002	Gunther Fux	16787-5	1922

7590 03/12/2004

Clifford W. Browning, Woodard,  
Emhardt, Naughton, Moriarty & McNett  
Bank One Center/Tower  
111 Monument Circle, Ste 3700  
Indianapolis, IN 46204-5137

EXAMINER
----------

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
----------	--------------

1722

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/062,201	<b>Applicant(s)</b> FUX ET AL.	
	<b>Examiner</b> Joseph S. Del Sole	<b>Art Unit</b> 1722	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 13-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/1/02</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because **a)** the abstract should be one paragraph and therefore second paragraph: "Fig. 1" should be deleted. Correction is required. See MPEP § 608.01(b).
2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if

the required "Sequence Listing" is not submitted as an electronic document on compact disc).

3. The disclosure is objected to because of the following informalities: **a)** the disclosure (i.e., pages 1, 4, 5) should not refer to specific claim numbers because claim content and numbering can change during prosecution thereof; **b)** the disclosure lacks the appropriate section headings as suggested above.

Appropriate correction is required.

### ***Drawings***

4. The drawings are objected to because **a)** Figure 6 shows two reference numerals that have been crossed out, #50 (next to #54) and #49 (next to #55). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "12" (page 6, line 20) and "16" (page 6, line 21). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "70" has been used to designate both an "axis" at page 8, line 30 and Figure 6 and an "inlet opening" at page 9, line 32 and Figure 8. A proposed drawing correction or corrected drawings are required in reply to the Office action to

avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "74" has been used to designate both a "tooth-system" at page 9, line 2 and Figure 6 and a "top corner" at page 10, line 4 and Figure 8. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 is dependent on cancelled claims 1-6 making it indefinite as to its metes and bounds.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

Art Unit: 1722

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 10-12 and 16-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17, 25, 26, 28 and 31-33 of copending Application No. 10/068,246 (the claims of preliminary amendment of 2/5/02) in view of Cockings et al (5,492,706).

Claims 17, 25, 26, 28 and 31-33 of 10/068,246 teach a nozzle carrier (claim 25) having a nozzle arrangement (claim 17, the limitation "for extruding doughy substances" is a process limitation that does not further limit the claimed apparatus) having an axis of rotation (claim 17, line 7); an inner nozzle having a mouth for extruding an inner substance (claim 17, lines 2 and 8); two outer nozzles (claim 17, line 4) which are disposed axially offset relative to the inner nozzle (claim 17, line 6) and are rotatable about the axis of rotation (claim 17, lines 6 and 7) and each have a mouth for extruding an outer substance (claim 17, lines 8-9); wherein the nozzle carrier has two parts, which are rotatable relative to one another (claim 25, line 5), a stator (claim 25, line 3), in which an inner feed channel (claim 25, line 3-4, the first feed channel) as well as a first (claim 25, lines 3-4, the second feed channel) and a second outer feed channel (claim 25, line 4, the third feed channel) are formed; a rotor (claim 25, line 4), which carries nozzles (claim 25, lines 4-5), is first rotatably supported in the stator (claim 25, line 5) and contains a first connection channel (claim 25, lines 5-6), which connects the inner feed channel (claim 25, line 6, the first feed channel) to the inner nozzle (claim 25, line

6, the second inner nozzle); in at least one of the stator and the rotor is an annular space (claim 25, line 7, the first annular space) and in the rotor a second connection channel (claim 25, line 8) which connect the first outer feed channel (claim 25, line 8, the second feed channel) to the first outer nozzle (claim 25, line 9); a second annular space (claim 25, lines 9-10) is formed (this limitation is interpreted by the Examiner such that the second annular space is formed in the rotor; this interpretation is supported by claim 10, Figures 1 and 6 and the specification at page 7, lines 28-32), which connects the second outer feed channel (claim 25, line 10, the third feed channel) to the second outer nozzle (claim 25, line 10); the rotor is sealed off relative to the stator by means of a first, second and third seal (claim 26, lines 1-2), wherein the first seal seals off the first feed channel (claim 26, line 3), the first and second seal seal off the first annular space (claim 26, lines 4-5); the second and third seal seal off the second annular space (claim 26, lines 5-6); the annular space in longitudinal section is in sections circular or elliptical in shape (claim 28-lines 1-3); the rotor is drivable by means of a traction mechanism gearing (claim 31; the Examiner notes that the limitation following "in particular" does not further limit the claim, but that claim 31 teaches the limitations "a toothed belt drive" and a "toothed gearing with intersecting axes"); a plurality of nozzle carriers are disposed side by side and drivable by means of a single traction means gearing (claim 32; the Examiner notes that the limitation following "in particular" does not further limit the claim, but that claim 32 teaches the limitations "a toothed belt drive" and a "single toothed gearing with intersecting axes"); and each nozzle carrier is disposed so as to be inclined at an angle  $\alpha$  of around 25° to the vertical (claim 33).

Claims 17, 25, 26, 28 and 31-33 of 10/068,246 fail to teach the inner nozzle coaxially with the axis of rotation.

Cockings et al teach an apparatus for coextruded food product wherein an inner nozzle (Fig 1, #16) exists coaxially with the axis of rotation for the purpose of producing a composite product with multiple strands twisted around a single strand such that for example strands of brioche dough and sausage meat may be twisted about an inner single strand of mustard (col 2, lines 15-20 and 42-60).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of claims 17, 25, 26, 28 and 31-33 of 10/068,246 with an inner nozzle located coaxially with the axis of rotation as taught by Cockings et al because it enables the production of a composite product having multiple strands twisted around a single strand, for example twists of brioche dough and sausage around mustard.

This is a provisional obviousness-type double patenting rejection.

The Examiner notes that Applicant's claims 16-18 are not actually dependent on any of claims 10-15, but are actually indefinite because they are dependent on cancelled claims. However, the Examiner has addressed the limitations contained within claims 16-18 as if they were dependent on claim 10 in an effort to further the prosecution of the application.



***Allowable Subject Matter***

12. Claims 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest the rotor of claim 10 having first and second inserts, wherein the first annular space is formed in the stator, the first insert and the second insert.

***References of Interest***

14. Schippers et al (3,694,292), Przytulla (4,208,178), Matthews et al (6,428,830), Israel et al (5,834,040), Rivlin (5,637,341), Heesen (3,752,632), Miller (4,906,171), Rasmussen (5,620,713), Verhoeven (3,940,226), Groff et al (4,288,463), Groff et al (6,450,796), Horna et al (US2002/0084281A1), EP0287209A2, EP0434983A1 and EP0876896A1 are cited of interest to show the state of the art. EP0876896A1 teaches a nozzle carrier having an inner nozzle flanked by two outer nozzles including a stator and a rotor. However, the reference fails to teach a second annular space formed in the rotor connecting the second outer feed channel to the second outer nozzle, as claimed in independent claim 10 and supported by Figures 1 and 6 and in the specification at page 7, lines 28-32.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

Art Unit: 1722

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

*Joseph S. Reed, Jr.* 3/8/04  
J.S.D.  
March 8, 2004